ters in dispute in the cause effectually and completely.

It is hereby ordered that –

(i) the Purchasers shall be joined as defendants in this action;

(ii) the Purchasers as defendants, shall be at liberty to enter appearance within fourteen days from this date;

(iii) should the plaintiff be mindful in proceeding with his application for a summary judgment under Order 14, such application shall be heard before me in Open Court on 30.1.82.

(iv) Costs in the cause.

Order accordingly.

Solicitors: *Jackson & Masacorale; Hassan Yunos & Co., Yee & Kwong.*

THEIN THAM SANG v. UNITED STATES ARMY MEDICAL RESEARCH UNIT & ANOR.

[O.C.J. (Hashim Yeop A. Sani J.) March 20, 1982]
[Kuala Lumpur – Originating Motion No. A24 of 1981]

Industrial Relations – Reference to Industrial Court by workman/claimant over dismissal by her employer – Death of claimant – Whether reference abated on death of claimant – Industrial Relations Act 1967, S. 20(3) – Specific Relief Act 1950, s. 44(1)

Labour Law – Reference to Industrial Court by workman/claimant – Death of workman – Reference abated on death

The facts in this case were as follows. One Elizabeth Thein (now deceased) was the claimant in a reference under section 20(3) of the Industrial Relations Act 1967. The dispute arose out of the dismissal of the claimant by her employer, the first respondent. While the reference was awaiting hearing the claimant died.

On April 7, 1981 the solicitors of the deceased claimant wrote to the Industrial Court and gave notice that the deceased claimant would now be represented by her surviving husband, the present applicant. On the same day, the solicitors for the employer wrote to the Industrial Court asking for postponement of the hearing because counsel concerned was involved in a High Court case elsewhere. In the same letter they intimated that they would be raising a preliminary issue at the hearing. The preliminary issue was that the reference ought to be struck out because of the death of the claimant.

When the reference was finally heard arguments on the preliminary issue were considered by the Industrial Court. The court ruled that "a reference under sub-section (3) following representations for reinstatement made under sub-section (1) of section 20 of the Act abates on the death of the workman/claimant. An employee's claim to reinstatement expires along with his death and it no longer remains a dispute capable of settlement or adjudication. Therefore, a reference of such a dispute goes beyond the purview of the Industrial Relations Act 1967".

The applicant contended, *inter alia*, that the Industrial Court was wrong in its finding that the reference abated on the death of the claimant. The court was faced with 2 issues: (1) whether the applicant was in law entitled to a relief under chapter VIII of the Specific Relief Act 1950;

(2) whether the reference under section 20(3) of the Industrial Relations Act 1967 abates on the death of the claimant.

Held, dismissing the application: (1) before an order under section 44(1) of the Specific Relief Act 1950 could be issued the claimant has to show that his personal right would be injured if the order is not made by the court. Nowhere in the affidavit of the applicant was it stated that he had such personal right or that the personal right would be injured if the order was not given;

(2) proviso (b) to section 44(1) requires the applicant to show that it was clearly incumbent on the Industrial Court to hear and determine the said reference. In this case it was not a fact that the Industrial Court refused to hear the case. It was really a case where the Industrial Court heard the case and decided on a preliminary issue which was within its jurisdiction;

(3) proviso (d) to section 44(1) provides that no order may issue under that section except where the applicant has no other specific and adequate legal remedy. In the applicant's case the award was only an interim order dealing with the preliminary point raised by the employer. Section 20(4) of the Industrial Relations Act does not operate as a bar to any action for damages in any court in respect of the alleged wrongful dismissal. The right to sue for money or equivalent of money due to a deceased workman whilst the case was pending before the Labour Court survives to the heirs, successors and legal representative and they can take action by way of a suit in a civil court;

(4) section 20 is a claim for reinstatement and is a claim personal to the claimant. Thus the action abated with the death of the claimant.

Cases referred to:

(1) *Koon Hoi Chow* v. *Pretam Singh* [1972] 1 M.L.J. 180.
(2) *Haramani Naik & Ors.* v. *Management Samaj & Anor.* [1978] Lab. I.C. 1630.
(3) *Yad Ram* v. *Bir Singh* [1974] Lab. I.C. 970.

ORIGINATING MOTION.

C.T. Khaw for the applicant.
C.V. Dass for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: This was an application for an order of mandamus to issue to the Industrial Court requiring it to hear and determine the substantial merits of Industrial Court case No. 72 of 1980.

The background facts are straightforward but the issues are quite involved. The facts are briefly as follows. One Elizabeth Thein (now deceased) was the claimant in a reference under section 20(3) of the Industrial Relations Act 1967. The dispute arose out of the dismissal of the claimant by her employer (the United States Army Research Unit the first respondent). On May 8, 1980 the Minister referred the dispute to the Industrial Court under section 20(3) of the Act. The reference was registered as Industrial Court Case No. 72 of 1980. While the reference was awaiting hearing the claimant died.

On April 7, 1981 the solicitors of the deceased claimant wrote to the Industrial Court and gave notice that the deceased claimant would now be represented by her surviving husband one Thein Tham Sang, the present applicant. On the same day the solicitors for the employer wrote to the Industrial Court asking for postponement of the hearing because counsel concerned was involved in a High Court case elsewhere but in the same letter intimated that they would be raising a preliminary issue at the hearing. The preliminary issue was that the reference ought to be struck out because of the death of the claimant.

When the reference was finally heard arguments on the preliminary issue were considered by the Industrial Court and a ruling was handed down in award No. 81 of 1981 dated May 14, 1981. The ruling of the Industrial Court appears in paragraph 10 of the award which for convenience is reproduced below:–

"For the above reasons the court is of the opinion that a reference under sub-section (3) following representations for reinstatement made under sub-section (1) of section 20 of the Act abates on the death of the workman claimant. An employee's claim to reinstatement expires along with his death and it no longer remains a dispute capable of settlement or adjudication. Therefore a reference of such a dispute goes beyond the purview of the Industrial Relations Act 1967."

In the Statement supporting the motion the following grounds for relief were advanced –

(1) The Industrial Court was wrong in its finding that the reference abated on the death of the claimant;

(2) The Industrial Court was wrong to hold itself *functus officio* on the death of the claimant;

(3) The Industrial Court was wrong in refusing to substitute the party deceased with the surviving husband, the applicants;

(4) Finally, the Industrial Court was wrong in declining jurisdiction to hear and determine the reference.

It can be seen that the first three grounds in effect challenged the ruling of the Industrial Court in Award No. 81 of 1981. The fourth ground alleged declining of jurisdiction by the Industrial Court. I need only mention in passing that the first three grounds in the Statement challenged the ruling made in the interim award but did not challenge the award itself. In a review jurisdiction it would seem to me to be odd for this court to substitute for the ruling of the Industrial Court the ruling of this Court but leave intact the award itself. By virtue of section 32(1) of the Industrial Relations Act 1967 an award of the Industrial Court under the Act shall be binding on all parties concerned. In other words, the granting of an order of mandamus in this case would produce an absurd situation when the Industrial Court will in effect be directed to act against its own award which is till standing and not quashed.

At the commencement of the motion Mr. Das raised the preliminary point on the status of the applicant. It was brought out that in O.S. A40 of 1981 the applicant had prior to the order granting leave to file a motion for mandamus applied, purporting to do so under 0.15 r 7 of the High Court Rules 1980 for an order of this court to represent the deceased in all subsequent proceedings. The order was granted. It was contended by Mr. Das now that 0.15 r 7 did not apply to the applicant as there was no pending action in the High Court. It was now disclosed that Letters of Administration was granted to the applicant only on November 3, 1981. i.e. nearly four months after the two orders were obtained. This fact was not in the record but was now admitted by Mr. Khaw. Mr. Das also contended that when the applicant applied to the Industrial Court under section 33A of the Industrial Relations Act to have the question of law referred to the High Court on May 22, 1981, i.e. almost six months before the applicant was granted the Letters of Administration, the Industrial Court correctly refused to entertain the application as the application was made by a person who was *not* a party to the proceedings. I am inclined to agree with the points raised

by Mr. Das but would, however, decide the present application on two other grounds.

There are really two basic issues involved and they are not mutually exclusive. The first issue is whether the applicant in this case is in law entitled to a relief under Cap. VIII of the Specific Relief Act 1950. Second, whether the reference under section 20(3) of the Industrial Relations Act 1967 abates on the death of the claimant.

It seems to be settled law that before an order under section 44(1) of the Specific Relief Act 1950 can be issued the conditions described in the proviso to that section must be fulfilled. It also seems to be settled that the five conditions are cumulative in effect and that all of them need to be fulfilled. See *Koon Hoi Chow* v. *Pretam Singh*[1].

Under proviso (a) of section 44(1) the applicant has to show his personal right would be injured if the order is not made by the court. Nowhere in the affidavit of the applicant here was it stated that he had such personal right or that the personal right would be injured if the order was not given.

It would seem clear that proviso (b) to section 44(1) requires the applicant to show that it was clearly incumbent on the Industrial Court to hear and determine Industrial Court Case No. 72 of 1980. It is alleged by the applicant that the Industrial Court had declined jurisdiction by refusing to hear and determine the çase. The record however, shows that Industrial Court case No. 72/80 was in fact heard by the Industrial Court on April 14, 1981 and at the conclusion of the hearing interim award No. 81 of 1981 was handed down on May 14, 1981. Thus it was not a fact that the Industrial Court refused to hear the case. It is really a case where the Industrial Court heard the case and decided on a preliminary issue which is within its jurisdiction. Therefore this is not really a case of declining jurisdiction.

Proviso (d) to section 44(1) clearly provides that no order may issue under that section except where the applicant has no other specific and adequate legal remedy. Paragraph 13 of the affidavit of the applicant dated July 4, 1981 states that as personal representative of the deceased claimant, he has no other specific and adequate remedies available. This is not true. The award which is the subject of this application was only an interim award dealing with the preliminary point raised by the employer. Award No. 81 of 1981 was not an award on the main claim itself. Therefore section 20(4) of the Act does not operate as a bar to any action for damages in any court in respect of the alleged wrongful dismissal. It seems clear on the authorities that the right to sue for money or equivalent of money due to a deceased workman whilst the case was pending before the Labour Court survives to the heirs, successors and legal representative and they can take action by way of a suit in a civil court – see *Haramani Naik and Others* v. *Management, Samaj and another*[2] and *Yad Ron* v. *Bir Singh*[3].

The answer to the second issue lies in the nature of the claim under section 20 of the Industrial Relations Act 1967. I do not think it need to be emphasised that section 20 of the Industrial Relations Act 1967 is unique to the Industrial Relations law of this country. It has no equivalent in India or elsewhere. In India the question whether an industrial dispute relating to termination of service of a workman survives after his death and whether his heirs or legal representatives can continue the proceedings has given rise to a sharp cleavage of judicial opinions and on this question therefore Indian authorities can at best offer only guide lines.

Section 20 of our Industrial Relations Act must be construed within the four corners of our own Statute. Section 20 of the Act as I said elsewhere (see [1981] M.L.J. 304) is a provision especially incorporated into our Act to provide relief to workman who are not members of any union who consider themselves to have been dismissed without just cause or excuse. As the section clearly says a claim under section 20 is a claim for reinstatement. It is a claim personal to the claimant. The Industrial Court cannot reinstate a dead workman. Any other reliefs the Industrial Court may give are merely incidental or ancillary to the main relief asked for. Thus the main claim under section 20 is personal in nature and the action abates with the death of the claimant.

The application was dismissed with costs.

Application dismissed.

Solicitors: *Allen & Gledhill; Shook Lin & Bok*